

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DANIEL PERRY OSWALD,

Plaintiff,

v.

Case No. 16-cv-991-pp

WILLIAM POLLARD, et al.,

Defendants.

**DECISION AND ORDER GRANTING IN PART THE PLAINTIFF'S
MOTION REQUESTING PERMISSION TO PREPAY
FILING FEE AND/OR PARTIAL FILING FEE FROM
INMATE RELEASE ACCOUNT (DKT. NO. 7)**

On July 26, 2016, Daniel Oswald, who is representing himself, filed a complaint under 42 U.S.C. §1983, alleging his civil rights were violated. That same day, he also filed a motion for leave to proceed without prepayment of the filing fee. Dkt. No. 2. On August 2, 2016, the court entered an order requiring the plaintiff to pay \$26.74 as an initial partial filing fee. Dkt. No. 6. On August 9, 2016, the plaintiff filed a motion asking that he be allowed to prepay the filing fee or the initial partial filing fee with funds from his inmate release account. Dkt. No. 7.

The Prison Litigation Reform Act (PLRA) requires the court to collect filing fees from a “prisoner’s account.” 28 U.S.C. §1915(b). The term “prisoner’s account” encompasses both a prisoner’s release account and general account. Spence v. McCaughtry, 46 F. Supp. 2d 861, 862 (E.D. Wis. 1999). However,

“given the purpose of the release account to provide funds to the prisoner upon his or her release from incarceration, the Court does not deem it prudent to routinely focus on the release account as the initial source of funds to satisfy the filing fee payment requirements of the PLRA.” Smith v. Huibregtse, 151 F. Supp. 2d 1040, 1042 (E.D. Wis. 2001). Nevertheless, upon request, a court may allow a plaintiff to pay a filing fee, or a portion thereof, out of his release account. Doty v. Doyle, 182 F. Supp. 2d 750, 752 (E.D. Wis. 2002).

The plaintiff has sufficient funds in his release account to pay the entire \$350 filing fee, but allowing him to use that account to cover the entire fee would significantly deplete the account. Given the Department of Corrections’ stated purpose for that account (i.e., to provide inmates with financial means upon their release), the court does not believe it is prudent to allow the plaintiff to use such a large percentage of the funds in that account to prepay a case filing fee, especially when the PLRA allows inmates to pay the fee over time. The court will allow the plaintiff to use his release account funds to pay the \$26.74 initial partial filing fee so that he may continue with his litigation. Once the court receives the initial partial filing fee, it will screen the plaintiff’s complaint pursuant to 28 U.S.C. §1915A.

The court **ORDERS** that the plaintiff’s motion to prepay the filing fee and/or the initial partial filing fee from his release account (Dkt. No. 7) is **GRANTED** in part.

The court further **ORDERS** that the warden at Waupun Correctional Institution shall withdraw \$26.74 from the plaintiff's release account and forward that sum to the clerk of court as payment for the initial partial filing fee in this action. The warden shall make that payment by **September 2, 2016**.

The court will mail a copy of this order to the warden at Waupun Correctional Institution.

Dated in Milwaukee, Wisconsin this 10th day of August, 2016.

BY THE COURT:

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line.

HON. PAMELA PEPPER
United States District Judge